

SUMMARY OF COMPLAINT AGAINST THE EPA

On June 22, 1993, six organizations joined together to initiate a lawsuit against the Environmental Protection Agency.

The lawsuit challenges the Environmental Protection Agency's decision of January 7, 1993, classifying environmental tobacco smoke (ETS) as a "Group A" or known human carcinogen.

The plaintiffs -- Flue-Cured Tobacco Cooperative Stabilization Corporation; The Council for Burley Tobacco, Inc.; Gallins Vending Company; Universal Leaf Tobacco Company, Inc.; Philip Morris Incorporated; and R.J. Reynolds Tobacco Company -- are asking the U.S. District Court for the Middle District of North Carolina to overturn the EPA decision and require EPA to withdraw both its classification of ETS as a Group A carcinogen and the ETS Risk Assessment on which that decision was based.

As detailed in the complaint, the EPA used faulty science and improper scientific procedures to arrive at its conclusion. EPA manipulated and "cherry-picked" scientific data, ignored recent studies that contradicted its conclusions and used scientific assumptions and methodologies not generally accepted by the scientific community or even by the agency itself in other risk assessments it had conducted in the past.

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When existing data failed to provide the agency with a sound scientific basis to declare ETS a known human carcinogen, it continued to manipulate the data until a statistical relationship between ETS exposure and lung cancer could be claimed.

In reaching its conclusion, the EPA ignored its own scientific guidelines because it:

- * did not follow accepted statistical principles;
- * engaged in unjustified biological assumptions;
- * failed to give full consideration to "all relevant scientific information";
- * failed to "fully present" critical scientific data;
- * failed to "use the most scientifically appropriate interpretation to assess risk"; and
- * failed to acknowledge and describe uncertainties, assumptions and limitations in both the data and its interpretation.

The plaintiffs also are asking the court to find that the EPA exceeded its statutory authority in concluding that ETS is a known human carcinogen and that any research programs on ETS not conducted in accordance with the agency's statutory authority be deemed unlawful.

By law, EPA's authority over indoor air quality stems solely from The Radon Act, which prohibits the agency from pursuing a regulatory program with regard to indoor air quality. In designating ETS as a Group A carcinogen, the plaintiffs allege EPA clearly intended its actions to have a

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regulatory impact, as enunciated by then-EPA Administrator William Reilly. Reilly expressed the hope that "no further action by any government agency will be necessary to create a smoke-free office environment" other than the EPA classification of ETS as a known human carcinogen.

The plaintiffs' rights have been violated and they have been damaged by the EPA's actions. As such, the plaintiffs ask the court to declare that, for the reasons alleged in its complaint, the EPA's classification of ETS "is wrong as a matter of law and science and, as such, is arbitrary and capricious."

The plaintiffs contend their only recourse against the EPA is under the Administrative Procedures Act, which helps to guarantee due process under law through the federal courts system.

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